IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No. 78-827

HELEN BALL,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

ON PETITION FOR
A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MEMORANDUM OPPOSING CERTIORARI

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The single federal question raised in the petition may be phrased in the following manner:

Does a state's legislative plan which authorizes recovery of interest on a tax refund only where the county has failed to grant a refund claim deny equal protection of the law to a taxpayer whose refund claim is granted by the county?

Former Sections 5105, 5108 and 5141 of the Revenue and Taxation Code authorized recovery of interest on a tax refund only where the county with notice of an improper assessment thereafter failed to grant a tax refund. These sections were

repealed, but largely reenacted in Sections 5150 and 5151 of the Code. Notice may be given by refund claim, application for equalization, or payment under protest. It is reasonable to deny interest unless and until the county receives notice and fails to correct a tax error.

A tax refund claim must be presented to and denied by the county before a court action may be legally commenced. Sections 5140, 5141, 5142, and former Sections 5103 and 5104 of the Revenue and Taxation Code.

There can be no doubt that making a successful claim to the county for a tax refund is more efficient and less expensive than litigating a complaint for the recovery of taxes.

It may reasonably have been the purpose and policy of the California Legislature, in creating governmental liability for interest on tax refunds only if they are obtained by court order, to encourage the prompt administrative settlement of tax disputes.

The general principles applicable to the determination of an equal protection challenge to state tax legislation were recently summarized as follows:

> "We have long held that '[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce

> reasonable systems of taxation.' [Citation]. A state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. [Citation]. This principle was weathered nearly a century of Supreme Court adjudications. . . ." Kahn v. Shevin (1974) 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed. 2d 189.

For these reasons, it cannot be said, in light of the settled law, that the tax provisions are invidious or arbitrary and deny petitioner the equal protection of the law.

Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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